

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DARRYL SMITH, #272 368,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:21-CV-393-WHA-SRW
)	[WO]
OFFICER MERRITT, et al.,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

This *pro se* 42 U.S.C. § 1983 action was filed with the Court on June 1, 2021. On July 8, 2021, the Court directed Plaintiff to submit to the Court—by July 29, 2021—an initial partial filing fee of \$112.53. Doc. 4. The Court informed Plaintiff his failure to comply with the Order of the Court would result in a recommendation this case be dismissed. *See* Doc. 4 at 3. To date, Plaintiff has not submitted the initial partial filing fee in compliance with the order of the Court.

A federal district court has the inherent power to dismiss a case *sua sponte* for failure to prosecute or obey a court order. *See, e.g., Link v. Wabash R.R. Co.*, 370 U.S. 626, 629–30 (1962); FED. R. CIV. P. 41(b). The Eleventh Circuit has made clear that “dismissal is warranted only upon a ‘clear record of delay or willful contempt and a finding that lesser sanctions would not suffice.’” *Mingo v. Sugar Cane Growers Co-Op of Fla.*, 864 F.2d 101, 102 (11th Cir. 1989) (per curiam) (emphasis omitted) (quoting *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985)). Here, the undersigned finds that Plaintiff has willfully failed to file a response in compliance with the Court’s order of July 8, 2021. And considering

Plaintiff's disregard for order of this Court, the undersigned further finds sanctions lesser than dismissal would not suffice in this case.

Accordingly, the undersigned Magistrate Judge RECOMMENDS this case be DISMISSED without prejudice.

A party may file objections to the Recommendation by **September 1, 2021**. Any objections filed by must specifically identify the factual findings and legal conclusions in the Magistrate Judge's Recommendation to which objection is made. Frivolous, conclusive or general objections will not be considered by the District Court. This Recommendation is not a final order and, therefore it is not appealable. Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar a party from a *de novo* determination by the District Court of factual findings and legal issues covered in the report and shall "waive the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions" except upon grounds of plain error if necessary in the interests of justice. 11TH Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

DONE, on this the 23rd day of August, 2021.

/s/ Susan Russ Walker
Susan Russ Walker
United States Magistrate Judge